

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1859 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MEENABEN W/O JITENDRASING RAMBHANSING PARIHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Ms. D.R.Kachhvah for the petitioner and learned AGP Mr. D.P.Joshi for the respondents. Leave granted to the petitioner to amend so as to enable the petitioner to add additional ground as stated in the draft.

#. The detention order dated 18th January, 1999 passed by respondent no.1 - Commissioner of Police, Ahmedabad

city against the petitioner in exercise of power conferred under section 3 (1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of the Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : B inter alia indicate that three prohibition cases are registered against the petitioner at Nashabandhi Police Station (East Division) in between 16.1.98 and 2.8.98. That in each of the case, country made liquor has been seized from the possession of the petitioner. Furthermore, two witnesses on assurance of anonymity have supplied information regarding incidents dated 27.12.98 and 3.1.99 in respect to the bootlegging activity of the petitioner. That in consideration of the said material, respondent no.1 as detaining authority has come to conclusion that the petitioner is a "bootlegger" within meaning of section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which prejudicially affects the maintenance of public order, the detention order is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that on the date of passing of the detention order, the petitioner was in police custody, however, the detaining authority has passed the detention order without considering the less drastic remedy like cancellation of bail though available under section 437(5) of Cr.P.C. and as such the subjective satisfaction having been vitiated, the detention order is rendered invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, on scrutiny of grounds of detention, it appears that the detaining authority has observed that though the petitioner is in remand custody,

he would be produced in court and after the remand period is over, he is likely to be released on bail and thereafter, he is likely to continue his anti-social activity and as such to prevent the petitioner forthwith, the detention order is necessary. That the detaining authority has acted on apprehension that the petitioner would be released on bail and would continue his anti-social activity. However, it does not appear that the detaining authority has considered the aspect of less drastic remedy like cancellation of bail or opposing the bail. In view of the said fact, I am constrained to hold that the subjective satisfaction reached by the detaining authority having been vitiated, the detention order is rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18th January, 1999 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Meenaben, W/o Jitendrasing Rambhansing Parihar is ordered to be set at liberty, if not required in any other case. Rule to that extent is made absolute.

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